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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,454	04/05/2005	Minoru Hoshino	KA0002	3040

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EXAMINER	
CHAPMAN, GINGER T	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/530,454	HOSHINO ET AL.	
	Examiner	Art Unit	
	Ginger T. Chapman	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 April 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*. See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *04/05/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of the claims

Claims 1-6 are pending in the application.

Withdrawn Objections:

The objection to the specification made of record in the previous Office action is withdrawn in view of Applicants preliminary amendment to the abstract filed 5 April 2005.

The objection to claim 1 made of record in the previous Office action is withdrawn due to Applicant's amendment to the claims filed 2 August 2006.

Claim Rejections - 35 USC § 102 / Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaki et al (US 5,858,012) in view of Iwao et al (JP 09-271488).

With respect to claim 1, Yamaki et al disclose, in Figures 1 and 2, a disposable absorbent article (fig. 1) including an absorbent article body (1) which comprises a liquid-permeable topsheet (36), a liquid-permeable back sheet (37), an absorbent core (38) disposed therebetween, and a cover sheet (19) attached to the outer surface of the liquid impermeable backsheet (37), wherein: the absorbent article body (1) has a rear waist region (7) a crotch region (8), and a front

waist region (6), which are integrally arranged in the longitudinal direction of the absorbent article (fig. 2), and the crotch region (8) has leg opening portions (16); a waist opening (14); the absorbent article body (1) also has: one or more waist opening (14) elastic members (21) extending circumferentially around waist opening (14), a plurality of rear waist elastic members (23) that are stretchable in the widthwise direction of the article, and a plurality of front waist elastic members (23) that are stretchable in the widthwise direction; the rear waist elastic members (23) form a rear elastic area (27) in rear waist region (7); the front waist elastic members (23) form a front elastic area (26) in the front waist region (6); and the rear elastic area (27) is broader than the front elastic area (26) with respect to the longitudinal direction of the absorbent article body (c. 2, ll. 47-49).

Yamaki et al disclose the invention substantially as claimed but do not expressly disclose the broader rear elastic area providing a greater number of rear waist elastic members than are provided front waist elastic members. Iwao et al express the desire to provide a disposable absorbent garment which fits tightly and well to the hips of a wearing person (abstr.). As seen in Figures 1, 2 and 4, Iwao et al teach a disposable absorbent article with broader elastic area (W1) provided with a greater number of elastic members than less broad elastic area (W2). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the broader elastic area of Yamaki provided with a greater number of elastic members as taught by Iwao et al since Iwao et al state that the advantage of providing an elastic area with this design is that it prevents sagging and imparts excellent appearance to the disposable article.

With respect to claim 3, as seen in Figure 2, Yamaki et al disclose the distance between the waist opening elastic members (21) and the portion of the rear waist elastic members (23) is approximately equal to the distance between each rear waist elastic member (23) and its adjacent rear waist elastic member (23).

With respect to claim 4, Yamaki et al disclose the distance between the waist opening elastic members (21) and the portion of the rear waist elastic members (23) closest the waist opening elastic members (21) is approximately equal to the distance between the waist opening elastic members (21) and the portion of the front waist elastic members (23) closest to the waist opening elastic members (21), and the absorbent core (38) is arranged so as not to overlap the front waist elastic area (26) while not overlapping at least a part of the rear elastic area (26) (col. 2, ll. 35-65; col. 1, ll. 40-51; abstract, penultimate lines).

With respect to claims 2 and 5, The Yamaki discloses the invention substantially as claimed but does not expressly disclose both ends of some but less than all of the rear waist elastic members are respectively connected to the ends of the corresponding front waist elastic members as recited in claim 2, and the front waist elastic members closest to the leg opening is located closer to the leg opening than the portion of the rear waist elastic member closest to leg opening as recited in claim 5. As best depicted in Figure 1, Iwao et al teach both ends of some but less than all of the rear waist elastic members are respectively connected to the ends of the corresponding front waist elastic members and teaches the front waist elastic members closest to the leg opening portions is located closer to the leg opening portions than the rear waist elastic members and, additionally, as best depicted in Figures 5, Iwao et al teach the front and rear waist elastic members located at approximately equal distance to the leg opening. In view of this

known teaching it would therefore have been obvious to one having ordinary skill in the art at the time the invention was made to form the either the front or the rear waist elastic members located closer to the leg openings since both configurations perform the identical function of conforming the diaper to the abdomen of the wearer and it has been held that rearranging parts of an invention involve only routine skill in the art. *In re Japikse*, USPQ 70.

With respect to claim 6, As seen in Figures 1 and 2, Yamaki et al disclose the distance separation between the leg opening portions (16) and the portion of the rear waist elastic members (23) closest to the leg openings is approximately equal to the distance between the leg opening portions (16) and the portion of the front waist elastic members (23) closest to the leg opening portions (16), and the absorbent core (38) is arranged so as not to overlap the rear elastic area (26) while overlapping at least a part of the front elastic area (27).

With regard to the limitations of the distances between the waist opening elastic members, leg opening elastic members and the front and rear waist elastic members recited in claims 2-6, the specification contains no disclosure of either the critical nature of the claim limitations nor any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. Such unsupported limitations cannot be the basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen variables are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ 2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine the ideal distances between elastic members for a particular sized article.

With regard to the limitations of the absorbent core overlapping the rear but not the front as recited in claim 4, or overlapping the front but not the rear as recited in claims 5 and 6, the combination of Yamaki and Iwao disclose the invention substantially as claimed except for the location of the core in either the front or the rear of the diaper. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the absorbent core in the front or rear as is known in the diaper art since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, USPQ 70.

Response to Arguments

Applicant's arguments filed 2 August 2006 have been fully considered but they are not persuasive. Applicant argues the following:

With regard to the Information Disclosure Statement (IDS) submitted 5 April 2005:

Applicant argues that the examiner did not consider reference no. JP 3024357 on the basis that the information listed is not in the English language and no translation of the foreign reference or concise explanation of relevance was provided; however, because the information was cited in a search report or other action by a foreign patent office the requirement for a concise explanation of relevance was satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance of the foreign language document found by the foreign office. Therefore Applicants request that the examiner provide an initialed copy of the IDS in the next communication from the Office.

Examiner notes the search report cited by Applicant indicates that the full text and all drawings of the foreign language reference are relevant. Therefore it is recommended that if any

information that has been cited by Applicants in the previous disclosure statement, is known to be material for patentability as defined by 37 CFR 1.56, Applicant should present a concise statement as to the relevance of that/those particular documents therein cited. The references cited by applicants in the IDS and listed on the 1449's have been made of record. Furthermore, 37 CFR 1.97 and 1.98 do not require that the information be material, rather they allow for submission of information regardless of its pertinence to the claimed invention. Also, there is no requirement to explain the materiality of the submitted references, however, the cloaking of a clearly relevant reference by inclusion in a long list of citations may not comply with Applicant's duty of disclosure, see *Penn Yan Boats, inc. V. Sea Lark boats Inc.*, 359 F. Supp. 948, aff'd 479 F. 2d. 1338.

With regard to independent claim 1:

Applicant submits that (1) Yamaki does not disclose a greater number of rear waist elastic members are provided than front waist elastic members and additionally that the rear elastic area is not broader than the front elastic area as recited in claim 1. Applicant further argues that (2) Yamaki discloses an equal number of elastic members in the front and rear areas and if there are an equal number of elastic members in the front and rear then the front and rear elastic areas must be equal to each other. These arguments are not persuasive because, as detailed supra, (1) Yamaki discloses at c. 2, ll. 47-49,

> the front and rear waist regions 6, 7 are additionally provided with a plurality of second elastic members 23. These second elastic members 23 each have a relatively large width of 3.about.10 mm and are stretchable circumferentially of the waist regions and bonded in their stretched conditions to an inner surface of at least one of the topsheet 17 and the backsheet 18. As

shown, an upper end 27 of the rear waist region 7 sufficiently extends upward beyond the elastic members 21 to overlie an upper end 26 of the front waist region 6.

Thus Yamaki discloses a broader rear area. Further, as detailed *supra*, Iwao et al teach elastic area (W1) is broader than elastic area (W2) and provides a greater number of elastic members in the broader elastic area, thereby satisfying the limitations of claim 1.

With regard to the argument that if there are an equal number of elastic members in the front and rear, then the front and rear elasticized areas must be equal in area, this argument is not persuasive because, as disclosed by Yamaki at c. 2, ll. 30-45, it is known in the diaper art that the width and numbers of elastic members can be varied in portions of diapers to provide varying degrees and areas of contractile force. As noted *supra*, Applicant has provided no criticality for a greater or lesser number of elastic members.

Applicants' arguments with regard to dependent claims 2-6 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

Conclusion

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman
Examiner, Art Unit 3761
10/12/06

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER